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110-301

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 112.

THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

SAMUEL H. TURRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 14, 1880.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Wednesday, the third day of March, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fourth.

WILLIAM H. BRADLEY, *Clerk.*

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the ninth day of July, A. D. 1877, there was filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, a certain mandate of the Supreme Court of the United States of America in said entitled cause, which said mandate is in the words and figures following, to wit:

Mandate of the Supreme Court of the United States.

2 Mandate of the Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, greeting:

[SEAL.] Whereas lately in the circuit court of the United States for the northern district of Illinois, before you or some of you, in a cause between Samuel H. Turrill, complainant, and the Illinois Central Railroad Company and John M. Douglas, defendants, wherein the decree of the said circuit court entered in said cause on the 16th day of July, A. D. 1874, is in the following words, viz:

And now, at this day, the court, being sufficiently advised upon the exceptions heretofore filed on the part of the complainant as well as of the defendants, sustains all exceptions of the defendants to the master's report which object to the amount of profits and the measure thereof made by the defendants by the use of the complainant's machine, and also sustains all the exceptions of the defendants which object to the allowance by the master of profits for the use of the complainant's machine by the defendants before the complainant had title to the patent or any part or interest therein. And as to all other exceptions of the defendants to the master's report the court overrules the same; and the court overrules the exceptions of the complainant to the master's report.

And the court being of opinion that the case should not be again referred back to the master, but that the court should find the amount of profits which the defendants have respectively made by the use of the complainant's machine, doth find the same to be the sum of ninety-one thousand nine hundred and eighty dollars and thirty-three cents.

It is therefore ordered and decreed that the said defendant, the Illinois Central Railroad Company, pay to the said complainant the sum of ninety-one thousand nine hundred and eighty dollars and thirty-three cents so as aforesaid found within thirty days from the date of this decree, and in default thereof that execution issue therefor. And it is further ordered that the said Illinois Central Railroad Company pay all the costs to be taxed herein.

And it is further ordered that the said Illinois Central Railroad Company, its servants, and agents, be perpetually enjoined and restrained from making or using any machine for repairing railroad bars embracing the improvement, or any substantial part thereof, for which letters patent were issued to Joseph D. Cawood.

And it is further ordered that this suit be dismissed as against John M. Douglas.

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the Illinois Central Railroad Company agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-six, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and that the said defendant recover against the said complainant, Samuel H. Turrill, twenty dollars for its costs herein expended, and have execution therefor. And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein, in conformity with the opinion of this court.

23rd April, 1877.

3 You therefore are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed July 9, 1877. Wm. H. Bradley, clerk.

And on the same day, to wit, the 9th day of July, A. D. 1877, in the record of the proceedings of said court in said entitled cause, before the honorable Thomas Drummond, judge, is the following entry, to wit:

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

Now comes the said complainant by his solicitor and upon the mandate

and opinion of the Supreme Court of the United States, on file
4 herein, and upon motion it is ordered that it be referred to Henry W. Bishop, esq., the master of this court, upon the testimony now on file in this cause, to ascertain and report to this court what amount of damages should be awarded to the said complainant in the premises, and in case the said master is not able to ascertain from the testimony now on file in this cause what amount of deduction from the former judgment of this court should be made by reason of the use by the said defendant of the Beebe and Smith, or the bayonet vise, or the Michigan Southern machines, he is directed, so far as may be necessary to ascertain the amount of such deduction, to take such additional testimony as he may think best, and that he make report with all convenient speed. This order is made without prejudice to the right of the defendant to insist and claim, before the master, that the question of damages should be considered by him as modified as to the comparison of the Cawood machine with those adjudged by the Supreme Court not to be an infringement of that machine; and the plaintiff here excepts to the last paragraph of this order.

Afterwards, to wit, on the 18th day of July, A. D. 1878, Henry W. Bishop, esq., the master in chancery to whom this cause was re-
5 referred, filed in said clerk's office his report in said entitled cause, which said report is in the words and figures following, to wit:

Report of master.

6 Circuit court of the United states, northern district of Illinois.
In chancery.

SAMUEL H TURRILL
v.
MICHIGAN SOUTHERN & NORTHERN INDIANA R. R. Co.,

and

SAME
v.
ILLINOIS CENTRAL R. R. Co.

MASTER'S REPORT.

To the honorable the judges of said court:

These causes having been re-referred to the undersigned, as master, by the opinion and mandate of the Supreme Court and the supplemental order of the circuit court, with directions, upon the testimony already upon file, if that be sufficient, but if not, then upon additional testimony, to ascertain the amount which should be deducted from the former finding of the circuit court for the work shown to have been done by the Beebe and Smith, the bayonet vise, or the Michigan Southern machines, which, by the judgment of the Supreme Court, have been considered not to have infringed the complainant's patent: I have, in compliance with
7 such order, been attended by the respective counsel, and have re-

examined the testimony which has already been taken in these cases, together with such testimony as has been recently taken upon this reference; and upon such examination, and after hearing the arguments of counsel, and having considered the opinion of the Supreme Court, I have come to the following conclusions:

First. That the standard of comparison by which the deductions are to be made, is a comparison between the common anvil and the Cawood machine, and not between the Cawood and the machines adjudged not to have been infringements.

Second. I find, as a matter of fact, that for the term within which this re-examination is directed, the proportion of work done, in the case of the Michigan Southern and Northern Indiana Railroad Company, upon machines decided by the court to have been non-infringing machines, is eighty one-hundred-and-ninety-sixths ($\frac{80}{196}$) of the total amount of the former decree. The former decree being for $222,666.89, the deduction as above stated would amount to $90,884.44, which deduction having been made, I find and report that there is now due and owing the complainant in that case the sum of one hundred and thirty-one thousand seven hundred and eighty-two and $\frac{45}{100}$ ($131,782.45) dollars.

Third. I find further, as a matter of fact, that for the term within which this re-examination is directed, the work done in the case of the Illinois Central Railroad Company upon machines decided by the court to have been non-infringing machines, computed upon the same basis as the former decree, amounted to the sum of $2,802.78, and for the same reasons, and on the evidence under the reference, I find that the gross sum of two thousand eight hundred and two and seventy-eight one-hundredths ($2,802.78) dollars should, for the non-infringing machines, be deducted from the former decree in this case, which deduction having been made, I find and report that there is due and owing the complainant in that case the sum of eighty-nine thousand one hundred and seventy-seven and fifty-five one-hundredths ($89,177.55) dollars.

8 In the case of the Illinois Central Railroad Company, I have examined the pleadings and evidence of the original case, and particularly the testimony of L. H. Clark, Shaw Stewart, Michael Lawler, and James Ryan, and also the depositions of witnesses taken on this reference in the case of the Michigan Southern and Northern Indiana Railroad Company.

And in the case of the Michigan Southern and Northern Indiana Railroad Company I have examined the pleadings and evidence of the original case, and particularly the testimony of James Redmond; also the late depositions of D. Ferenbeck, George H. Dickens, John B. Stewart, H. D. Corbus, James Park, James Haverly, Norman Andrews, S. H. Turrell, George Wagner, Lyman Beebe, Charles Paine, George T. Smith, and James Redmond.

In arriving at these conclusions I have recognized the fact which appears throughout in the record of these cases, and which was stated in my former report, that there is no difference between the amount of work capable of being done by the infringing and the non-infringing machines, and in this respect have treated them all alike. I have determined the proportion of deduction as shown by the testimony as aforesaid, and applied it to the cases.

Considering the directions of the Supreme Court in its opinion and

mandate in the light which seems to me to be the one which alone I am permitted to follow, I have come to the conclusion that the deductions as contended for by the complainant should be made in the case of the Michigan Southern and Northern Indiana Railroad Company, pursuant to the terms of this reference; which deductions are eighty one-hundred-and-ninety-sixths ($\frac{80}{196}$) of the former decree, leaving one hundred and sixteen one-hundred-and-ninety-sixths ($\frac{116}{196}$) of that decree as the amount which should be awarded in that case. Applying this method in the case of the Michigan Southern and Northern Indiana Railroad Company, the complainant's claim should be reduced to the sum of one hundred and thirty-one thousand seven hundred and eighty-two and forty-five one-hundredths ($131,782.45) dollars, which sum I now find to be due.

9 And in the case of the Illinois Central Railroad Company, after having made the same application and the deduction heretofore referred to, the balance found by me to be due to this complainant is the sum of eighty-nine thousand one hundred and seventy-seven and $\frac{55}{100}$ ($89,177.55) dollars.

I know of no other method afforded by the testimony by which an approximately correct result can be arrived at in these cases, except that furnished by the complainant's counsel. I have, therefore, adopted it as exhibiting most accurately and satisfactorily the information called for by the court. I herewith return the testimony recently taken, used by me upon this reference.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, July 17th, A. D. 1878.

(Endorsed:) Filed July 18, 1878. Wm. H. Bradley, clerk.

10 Afterwards, to wit, on the 14th day of August, A. D. 1878, said defendant, by its solicitor, filed in said clerk's office its motion to recommit said master's report in said entitled cause, which said motion is in the words and figures following, to wit:

Motion to recommit report.

In the United States circuit court in the northern district of Illinois.

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

And now comes the said defendant, by George Payson, its solicitor, and moves the court to set aside the report heretofore, to wit, on the eighteenth day of July, 1878, filed in said cause by H. W. Bishop, esq., master in chancery of said court, and recommit the same to the said master with directions to file a new and more detailed report, and assigns therefor the following reasons:

1. The said report contains no account from which the said defendant

or the said court can determine the method or mode of calculation or the data from which the said master deduced his conclusions.

2. The said master has not stated the account at length, with all the facts found by him, so that they shall be intelligible without reference to the testimony.

3. The said report does not show with any certainty the evidence on which the same is founded.

11 4. The said report nowhere states how or whence the said master derived the $2,802.78, which he finds to be the amount of work done on the said non-infringing machines.

5. The said report fails to show what period of time is covered by it.

6. The said report fails to show the number of rails mended during said period.

7. The said master states that he has adopted the method furnished by complainant's counsel, without shewing even what that method is, much less explaining or justifying it.

8. The said report was filed by the said master without any notice to the said defendant or any time for said defendant to make objections.

9. From the general nature of the said report it is impossible for said defendant to make its exceptions thereto with the desirable particularity.

10. Though the decree calls for an account, and the reference to the master is presumed to have been made for that purpose, yet no account is here presented.

Wherefore and for many other errors and omissions and imperfections in the said report the said defendant moves that the same be set aside and recommitted to the master with directions to file a new report, with the grounds of his conclusions and the evidence in support of those

12 conclusions more fully and clearly stated and set forth.

August 14th, 1878.

GEORGE PAYSON,
Defendant's Solicitor and of Counsel.

(Endorsed:) Filed Aug. 14, 1878. Wm. H. Bradley, cl'k.

12 Afterwards, to wit, on the 16th day of August, A. D. 1878, said defendant, by its solicitor, filed in said clerk's office its exceptions to the said report of said master, which said exceptions are in the words and figures following, to wit:

Exceptions to master's report.

In the United States circuit court in the northern district of Illinois.

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

Exceptions taken by the defendant to the report made herein by H. W. Bishop, esq., master in chancery of this court, and filed July 18th, 1878, under the interlocutory decree of July 9th. 1877.

The said defendant, not waiving the motion heretofore, to wit, on the

14th day of August, 1878, filed in said cause to set aside and recommit said report, but still insisting thereon, now comes and presents its exceptions to said report as follows:

1. For that the said report contains no account from which the said defendant or the said court can determine the method or mode of calculation or the data from which the said master deduced his conclusion.

2. For that the said master has not stated the account at length, with all the facts found by him, so that they shall be intelligible without reference to the testimony.

3. For that the said report does not show with any certainty the evidence on which the same is founded.

4. For that the said report nowhere states how or whence the said master derived the $2,802.78, which he finds to be the amount of work done on the non-infringing machines.

5. For that the said report fails to show what period of time is covered by it.

6. For that the said report fails to show the number of rails mended during said period.

7. For that the said master states that he has adopted the method furnished by complainant's , without showing even what that method is, much less explaining or justifying it.

8. For that the said report was filed by the said master without any notice to the said defendant or any time for said defendant to make objections.

9. For that though the decree calls for an account, and the reference to the master is presumed to have been made for that purpose, yet no account is here presented.

10. For that the said master has charged the said defendant with the difference in the cost of mending between the Cawood and the old swage-block, as if that were the only machine then free and open to the defendants to use, whereas, during the whole or a considerable portion of the time covered by his said report, there were several other such machines, to wit, the Springfield bayonet, the baoynet vice, and the Michigan Southern machines, all as good or better than the said Cawood, and all open and free to said defendant to use.

11. For that in making his said comparison of the cost of mending he has confined himself to the said swage-block machine, and has refused to consider the Springfield bayonet machine used at Springfield as early as 1845.

12. For that in like manner he has refused to consider the Michigan Southern machine.

13. For that in like manner he has refused to consider the bayonet vice machine.

14. For that the said master has charged said defendant with a large number of rails mended prior to February 18th, 1862, the time when said plaintiff became sole owner of said patent.

15. For that the said master has assumed that the Cawood machine, as described in the said patent, was the same as the rack and pinion machine used by this defendant, whereas the evidence shows that the said Cawood was a very inferior machine, and not capable of doing as much work in the same time as the said rack and pinion.

16. For that the master has made his report on the theory that this defendant had used the Cawood machine proper as described in said
16 patent, whereas the evidence shows that the form of machine actually used by this defendant was much superior to the said Cawood.

17. For that the master has credited all the savings found by him to have been made by defendant solely to the advantages supposed to be possessed by the Cawood machine, as described in said patent, whereas a large part of said advantage is due to the improved form of the machine used by defendant, and not to the said Cawood machine.

18. For that the said master found, and in and by his said report decided, that the several machines in use for holding railroad rails during the process of reparation was equally valuable, thereby giving to the said Cawood machines and to the said complainant the benefits of improvements not covered by the Cawood patent.

19. For that the said master, as is shown in and by his said report, adopted a false and improper standard of comparison by which to test the value to the said defendants of the Cawood machines in this, viz, the said master, notwithstanding the knowledge and public use of machines for holding rails whilst undergoing repairs which, in his said report, are admitted to be equally as good as the Cawood machines, and which are admitted and decided to be non-infringing, still, for the purpose of fixing the amount to be paid by the defendant to the complainant, ignored
17 the existence of said non-infringing machines in respect to all rails not mended thereon, and as to all such rails fixed said amount at what he found to be the difference between mending them upon the Cawood machine and upon the common swage-block, whereas the defendant insists upon its right to have the comparison made between the cost of doing the work upon the Cawood machines and the best non-infringing machines known, and free and open to the public or to the said defendant.

In each and all which particulars the said defendant excepts to the said report of the said master as erroneous, and appeals therefrom to the judgment of this honorable court.

GEORGE PAYSON,
Defendant's Solicitor and of Counsel.

JNO. N. JEWETT,
Of Counsel for Def't.

(Endorsed:) Filed Aug. 16, 1878. Wm. H. Bradley, cl'k.

18 Afterwards, to wit, on the 1st day of October, A. D. 1878, in the record of the proceedings of said court in said entitled cause, before the honorable John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

On motion of complainant's counsel, it is ordered that the motion to confirm the master's report, the exceptions of the defendant notwithstanding, be set down to be heard on Tuesday, the eighth day of October, A. D. 1878.

Afterwards, to wit, on the 10th day of July, A. D. 1879, in the record of the proceedings of said court in said entitled cause, before the honorable John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

Now, on this tenth day of July, A. D. 1879, come the respective parties by their counsel in each of the above cases, and the preliminary motion of the defendant to recommit the report of the master for certain causes
19 now coming on to be heard, the court overrules the said motion to recommit the said report, but directs the master, with all convenient speed, to return and make a part of his report heretofore filed a detailed schedule or statement, showing the manner in which he arrived at the conclusion stated in his report and the mode in detail adopted by him in that behalf in the above case; and upon the filing of said additional statement liberty is given to the defendant to file additional exceptions, if it is so advised, within ten days.

Afterwards, to wit, on the 12th day of July, A. D. 1879, in the record of the proceeding of said court in said entitled cause, before the honorable John M. Harlan, one of the justices of the Supreme Court of the United States, is the following entry, to wit:

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

Now come the parties by their counsel, and the master having filed schedules, etc., to his report as directed by this court in its order of the tenth of July, A. D. 1879, and the parties now consenting, it is ordered that the exceptions filed and to be filed to the master's report in said cause be heard at Madison on the twenty-ninth day of July instant.

20 On the same day, to wit, the 12th day of July, A. D. 1879, said Henry W. Bishop, master in chancery of said court, filed in said clerk's office his supplemental report in said entitled cause, which said report is in the words and figures following, to wit:

Master's supplemental report.

21 In the circuit court of the United States for the northern district of Illinois. In chancery.

SAMUEL H. TURRILL
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY.

SAME
v.
THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY.

SUPPLEMENTAL REPORT OF THE MASTER.

To the honorable the judges of said court:

In obedience to the direction of the court, the undersigned, as master, doth now return herewith Schedule A, showing in detail how he arrived at the deduction of two thousand eight hundred and two dollars and seventy-eight cents ($2,802.78) in the case of the Illinois Central Railroad Company. And also Schedule B, showing in detail how he arrived at the deductions directed to be ascertained and made in the case against the Michigan Southern and Northern Indiana Railroad Company, and which in his report he ascertained to be the sum of ninety thousand eight hundred and eighty four-dollars and forty-four cents ($90,884.44).

And I, the said master, report that the principle upon which I ascertained the amount of the deduction last aforesaid was this, to wit: I found, as stated in said report as a fact, that the machines found by the Supreme Court to be non-infringing could, under like circumstances, perform the same amount of work within the same period of time as could the machines adjudged by that court to be infringements of the Cawood patent; then, considering that I was directed by the mandate of the Supreme Court, as well as by the order of the circuit court, to deduct the amount of work, and its value, done by the said non-infringing machines and included in the former decree of this court, I proceeded to ascertain, as
22 indicated by Schedule B, how many of both the infringing and non-infringing machines, and for how long a time, had been used at each of the several places on the road of the last-named defendant, and I then reduced the machines, where there was more than one and for different times, to the equivalent of one machine for the proper equated time. By this means I found, as is shown more in detail by Schedule B, that the use of the non-infringing machines was equal to the use of one machine for eighty years eight months and ten days within the period of inquiry; and that within the same period of inquiry the use of the infringing machines was equivalent to the use of one machine for one hundred and sixteen years and ten months. Taking the years as a basis this gave the following result, viz: That the use of the infringing and non-infringing machines together, as represented and covered by the former decree, was equivalent to the use of one machine for one hundred and ninety-six years, for which, in the former decree, damages had been given to the sum of two hundred and twenty-two thousand six hundred and sixty-six

dollars and eighty-nine cents ($222,666.89). But, as now found, the non-infringing machines, so called, had done eighty parts of the work for which judgment had been thus rendered; I therefore deducted $\frac{8}{196}$ of the amount of the former decree, thereby leaving the balance of $\frac{116}{196}$ of the former decree to stand, as representing the value of the work done by the infringing machines.

Dated this 12th day of July, A. D. 1879.

Respectfully submitted,

HENRY W. BISHOP,
Master, &c.

Filed July 12, A. D. 1879.

WM. H. BRADLEY, *Clerk.*

SCHEDULE A.

This cause having been referred to the master to make certain deductions, on account of the Beebe and Smith and bayonet vise machines, from the original decree entered in this cause in July, 1874, for the sum of $91,980.33, the complainant now comes and makes reference
23 to the printed testimony, furnishing the basis for such deduction, as follows:

1. Deduct 542 rails repaired on the Beebe and Smith machine at Centralia, as testified to by L. H. Clark (printed record, page 146), at 17.71 inches, as found by the master; making 800 feet, at 36 cents per foot	$288 00
2. Deduct 333 frogs, being one-half of the number made at the Weldon shops from September 1st, 1867, to September 9th, 1870 (printed record, pages 16 and 147 and 262–3), where one bayonet vise machine and two Illinois Central block machines were used, at 13 feet per frog; making 4,329 feet, at 36 cents per foot	1,558 44
3. Deduct 1,800 rails, being 50 rails per month for 36 months, repaired on bayonet vise machine, from September 1st, 1867, to September 9th, 1870 (printed record, page 264), at 17.71 inches per rail; making 2,656 and one-half feet, at 36 cents per foot	956 34
Total	2,802 78
Balance due the complainant	$89,177 55

Reference being made to the printed record pages in support of the foregoing items, as follows:

Item 1. Testimony of L. H. Clark, pages 146, 147.

Item 2. Testimony of Shaw Stewart, pages 257, 259; Michael Lawler, page 265; James Ryan, page 267, and pages 16, 39.

Item 3. Testimony of Shaw Stewart, page 264; L. H. Clark, page 147.

SCHEDULE B.

Reference to evidence touching the use of the Cawood machines, or their equivalents, by said Michigan Southern and Northern Indiana Railroad Company from February, 1862, to November, 1869.

24 1st. At Adrian, Michigan:

Four machines were used from February 18, 1862, to November, 1869; 7 years 8 months and 10 days = 1 machine for 30 years 9 months and 10 days. (See evidence of James Redmond.)

Ans. to int. where he says there were four Cawoods in use from fall of 1856 to summer of 1869.

Depn. ints. 4 and 5.

And see book, pp. 484–5 and 624, being record in Supreme Court U. S.

But in the use of the Cawood, furnace fires, it appears, were used altogether at Adrian, and thereby one-third to one-half more each day was mended than was done at the open fires. (Geo. H. Dickens, ans. to int. 19; James Redmond, ans. to int. 13.)

The ordinary day's work on the Beebe and Smith or Cawood, as testified to by defendant's witnesses, was at the open fires from 8 to 10 rails. (John B. Stewart, book, p. 664, int. 32.; H. J. Corbus, book, p. 674, x int. 46.)

Therefore there was done at Adrian, on the Cawood machine, one-third to one-half more than ordinary day's work on the B. & S., say one-half, which is equal to two machines, extra—2 for 7 years 8 months and 10 days = 15 y'rs 4 mos. and 20 d's.

2d. Coldwater, Michigan:

2 Cawood machines were used from February 18, 1862, to February 18, 1866—4 y'rs = one machine for 8 years.

2 Cawood machines were used from February 18, 1862, to November 1, 1868—6 y'rs 8 mos. and 10 d's = 1 machine for 13 y'rs 4 mos. and 20 d's.

2 Cawood machines were used at furnace fires for 4 years = one extra machine for 4 years. (Geo. H. Dickens, ans. ints. 19 and 20.)

3d. Laporte, Indiana:

6 Cawood machines were used from February 18, 1862, to February 18, 1865—3 years = 1 machine for 18 years.

(1). As to number of machines see evidence of James Park (book, p. 660, ints. 6 and 7.)

25 (2). Beebe & S. machine, put in in 1865—bayonet vice. (a). James Haverly, depn. ints. 10, 13. (b). Norman D. Andrews, depn. (c). Turrill—as to machines at Detroit.

The assumption is that 6 or 7 machines were used all the time from 1862 to 1869, and that in 1865 2 Cawoods were displaced by 1 B. & S. & 1 B. V.

4 machines from 1865 to 1869, as above: 4 y'rs 8 mo. & 10 d's = 18 y'rs 9 mos. & 10 d's.

4th. Hudson, Michigan:

1 Cawood machine was used for 5 years. (Geo. Wagner, book, p. 665, ints. 6–11.)

(1). This witness (defendant's) worked on and describes the machine.

5th. Kendallville:

1 Cawood machine was used from June, 1864, to January, 1868; 3 y'rs 6 mos. John P. Stuart, depn. ints., 65–'7. (D. Ferenbeck, book, p. 279.)

(1). Ferenbeck says he went to Wauseon about six years before his evidence was taken—in 1870, January 12. (Book, p. 279, int. 5.)

(2). Stuart says he commenced at Kendallville same year and mo. as they did at Wauseon. (Ints. 65–'7.)

NON-INFRINGING MACHINES.

1st. Adrian, Michigan:

4 Beebe & Smith machines were used from August 1, 1862, to August 1, 1866—4 years = 1 machine for 16 years. (J. Redmond, book, p. 484, ints. 11. And see depn. ints. 5, 10, 11. See Turrill's depn.)

2d. Monroe:

2 Beebe & Smith machines were used from August 1, 1862, to November 1, 1868—6 years and 3 mos. = 1 machine for 12 years and 6 mos. (J. Redmond depn., int. 27 and 28.)

26 NOTE.—Without positive proof thereof the defendant is given the benefit of having used three machines during all the time above stated.

3d. Wauseon, Ohio:

2 Beebe & Smith machines were used from January, 1864, to Jan., 1868—4 years = 1 machine for 8 years. (D. Ferenbeck, book, p. 279, int. 5. And see depn. taken Jan. 12, 1870, in printed book.)

4th. Coldwater, Michigan:

2 Beebe & Smith machines were used from February 18, 1866, to November, 1868—2 y'rs 8 mos. and 10 d's = 1 machine for 5 years 4 mos. and 20 d's. (Geo. H. Dickens depn., int. 8.)

5th. Elkhart, Indiana:

2 Beebe & Smith machines were used from February 18, 1862, to November, 1868—6 yrs. 8 mo. and 10 d's = 1 machine for 13 years 4 mo. and 20 d's.

2 Beebe & Smith machines were used from August 1, 1862, to November, 1868—6 yrs. and 3 mos. = 1 machine for 12 yrs. and 6 mos.

NOTE.—Defendant is given the benefit of having used 2 machines from Feb. 18, to Aug. 1, 1862. (J. Redmond, book, p. 484; and see Turrill's deposition.)

6th. Kendallville:

1 Beebe & Smith machine was used from January, 1864, to January, 1868—4 years. (John P. Stuart depn., ints. 65–'6. D. Ferenbeck, book, p. 270.)

7th. Laporte, Indiana:

1 Beebe & Smith machine was used from February 18, 1865, to November, 1869—4 yrs., 8 mos., and 10 days.

Bayonet vice machine was used from August 1, 1865, to November, 1869—4 yrs. and 3 mos. Witnesses: James Haverly, depn., ints. 7 and 12. Samuel H. Turrill.

Haverly says, to int. 14, that the Beebe & Smith was used very little, but they are credited full time.

Andrews' deposition.

27 RECAPITULATION.

NON-INFRINGING MACHINES.

Adrian, Mich	16 y'rs.		
Monroe, "	12 "	6 mos.	
Wauseon, O	8 "		
Coldwater, Mich	5 "	4 "	20 d's.
Elkhart, Ind	13 "	4 "	20 "
" "	12 "	6 "	
Kendallville	4 "		
Laporte	4 "	8 "	10 "
"	4 "	3 "	
	80 "	8 "	10 "

INFRINGING MACHINES.

Adrian, Mich	30 y'rs	9 mos.	10 d's.
" "	15 "	4 "	20 "
Coldwater	25 "	4 "	20 "
Laporte, Ind	36 "	9 "	10 "
Hudson, Mich	5 "		
Kendallville	3 "	6 "	
	116 "	10 "	

(Endorsed:) Filed July 12, 1879. Wm. H. Bradley, clerk.

28 Afterwards, to wit, on the 16th day of July, A. D. 1879, said defendant, by its solicitor, filed in said clerk's office its exceptions to the original, amended, and supplemental reports of said master in chancery in said entitled cause, which said exceptions are in the words and figures following, to wit:

Exceptions to original, amended, and supplementary master's reports.

29 In the United States circuit court, northern district of Illinois.

SAMUEL H. TURRILL
v.
ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

Exceptions taken by defendant to the original, amended, and supplemental reports made herein by H. W. Bishop, master in chancery, under interlocutory decrees of July 9th, 1879, and July 10th, 1879.

30 1. For that the said report was filed by the said master without any notice to the said defendant or any time for the said defendant to make any objections.

2. For that said master has charged said defendant with a large number of rails mended prior to February 18th, 1862, the time when said plaintiff became sole owner of said patent.

3. For that the said master has charged the said defendant with the difference in the cost of mending between the Cawood and the old Swage block, as if that were the only machine then free and open to the defendant to use, whereas, during the whole or a considerable portion of the time covered by his said report, there were several other such machines, to wit: The Springfield bayonet, the bayonet vise and the Michigan Southern machines, all as good or better than the said Cawood, and all open and free to said defendant to use.

4. For that in making his said comparison of the cost of mending, he has confined himself to the said Swage block machine, and has refused to consider the Springfield bayonet machine used at Springfield as early as 1845.

5. For that in like manner he has refused to consider the Michigan Southern machines.

6. For that he has in like manner refused to consider the bayonet vise machine.

7. For that the said master, as is shown in and by his said report, adopted a false and improper standard of comparison by which to test the value to the said defendant of the Cawood machines in this, viz: The said master, notwithstanding the knowledge and public use of machines for holding rails whilst undergoing repairs, which in his said report are admitted to be equally as good as the Cawood machines, and which are admitted and decided to be non-infringing, still for the purpose of fixing the amount to be paid by the defendant to the complainant, ignored the existence of said non-infringing machines in respect to all rails not mended thereon, and as to all such rails fixed the said amount at what he found to be the difference between mending them upon the Cawood machines and upon the common Swage block, whereas the defendant insists upon its right to have the comparison made between the cost of doing the work upon
31 the Cawood machines and the best non-infringing machines known, and free and open to the public, or to said defendant.

8. For that said master has assumed that the Cawood machine, as described in said letters patent, was the same as the Illinois Central machine used by the defendant, whereas the evidence shows that the said Cawood was a very inferior machine, and not capable of doing as much work in the same time as the said Illinois Central machine.

9. For that the said master has made his report on the theory that this defendant had used the Cawood machine proper, as described in said patent, whereas the evidence shows that the form of machine actually used by defendant was much superior to the said Cawood.

10. For that said master has credited all the savings found by him to have been made by defendants solely to the advantages supposed to be possessed by the Cawood machine, as described in said patent, whereas a large part of said advantages is due to the improved form of the machine used by defendant, and not to the said Cawood machine.

11. For that the said master found, and in and by his said report decided that the several machines in use for holding railroad rails during the process of reparation were equally valuable, thereby giving to the said Cawood machine and to the said complainant the benefit of improvements not covered by the Cawood patent.

12. For that the amount due from said defendant, even upon the sup-

position that the theory adopted by the master is the true one, is still very much less than the amount found by him. Thus the total number of rails mended by this defendant from 1862 down to 1869, both inclusive, being 136,852, as found by him. If we, then, deduct from this 7,785 rails mended on the Beebe and Smith's and bayonet machines, 3,041 rails paid for in the suit at law, and one-quarter of the remainder for cut-offs, we shall have 93,684 rails, or 138,265 feet, which, at 36 cents a foot, would amount to $49,775.40, instead of $89,177.55, reported by him.

In each and all of which particulars the said defendant excepts
32 to the said report of the said master as erroneous, and appeals therefrom to the judgment of the honorable court.

GEORGE PAYSON,
Solicitor for Defendant, and of Counsel.

(Endorsed:) Filed July 16, 1879. Wm. H. Bradley, cl'k.

33 Afterwards, to wit, on the 3rd day of March, A. D. 1880, in the record of the proceedings of said court in said entitled cause before the honorable John M. Harlan, one of the justices of the Supreme Court of the United States is the following entry, to wit:

SAMUEL H. TURRILL
v.
ILLINOIS CENTRAL RAILROAD COMPANY. } In chancery.

This cause came on to be further heard before the honorable John M. Harlan, sitting as circuit justice, on the twenty-ninth day of July, A. D. 1879, being one of the days of the July term of said court, upon the report of Henry W. Bishop, esq., master, filed herein on the eighteenth day of July, A. D. 1878, and upon his supplemental report filed herein on the twelfth day of July, A. D. 1879, and upon the evidence and orders therein referred to, and also upon the original exceptions to the said master's report filed on the fourteenth of August, A. D. 1878, and upon the modified exceptions filed to the original and supplemental reports of the said master on the sixteenth of July, A. D. 1879, and the said exceptions having been then and there argued by counsel, and the said court having taken the same under advisement until this day, to wit, the third day of March, A. D. 1880, and being now, to wit, on the day and year last afore-
34 said fully advised in the premises, and the respective parties being now present here in court by their respective solicitors, it is thereupon hereby ordered, adjudged, and decreed by the said justice that all of the said exceptions of the said defendant be, and the same are hereby, overruled; and it is further hereby ordered, adjudged, and decreed that the said complainant do have and recover of the said defendant the said sum of eighty-nine thousand one hundred and seventy-seven dollars and fifty-five cents ($89,177.55); and the court doth further order and adjudge that the said complainant is entitled to interest on the said last-mentioned sum of money at the rate of six per cent. per annum from and after the twelfth day of July, A. D. 1879; and it further appearing to the court that the said first-mentioned sum of money and the interest thereon as aforesaid do amount at the date of the entry of this decree, to wit, the third day of March, A. D. 1880, to the sum of three thousand four hun-

dred and eighteen dollars and forty-six cents ($3,418.46), it is thereupon considered, ordered, adjudged, and decreed by the court that the said complainant do have and recover of the said defendant, The Illinois Central Railroad Company, the said last-mentioned sum of ninety-two thousand five hundred and ninety-six dollars and one cent ($92,596.01) besides the costs herein since the remanding hereof to be taxed by
35 the clerk of this court; and that the said complainant have execution in the premises according to law, and that execution issue accordingly.

And thereupon the solicitor of the said defendant prays an appeal from the decree aforesaid, which is allowed upon the filing of an appeal bond in the sum of one hundred and twenty-five thousand dollars ($125,000.00), with sureties to be approved by the court.

And on the same day, to wit, the 3rd day of March, A. D. 1880, the following certificate of evidence was filed in said clerk's office in said entitled cause, to wit:

Certificate of evidence.

United States circuit court, northern district of Illinois.

SAMUEL H. TURRILL *v.* THE MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD COMPANY. and SAMUEL H. TURRILL *v.* THE ILLINOIS CENTRAL RAILROAD COMPANY.	In chancery.

Certificate of evidence for the record of the United States Supreme Court.

36 It is hereby agreed by and between the parties to the above-entitled suits that the following is a correct statement of the evidence presented by both parties in the above-entitled suits since the same were remanded to this court.

First. The testimony of the following-named witnesses for the complainant, George H. Dickens, John P. Stuart, James Redmond, James Haverly, Norman D. Andrews, and Samuel H. Turrill.

Second. The testimony of the following-named witnesses for the defendants, Lyman Beebe, Charles Paine, C. D. Roys, and George F. Smith.

Third. That the depositions of the witnesses above named were taken and may be used in each of the above-entitled causes so far as pertinent thereto.

Fourth. All letters patent, models, reports, and exhibits produced and used in the circuit court in these cases may be produced, referred to, and used on the hearing in the Supreme Court with the same force and effect as if each and all of them were made part of the record.

Fifth. That the said evidence may be made a part of the record in the said suit against the Michigan Southern and Northern Indiana Railroad Company, and may be used in the suit against the Illinois Central Rail-

road Company before the Supreme Court so far as pertinent thereto
37 without being also made a part of the record in that case.

FRANCIS H. KALES,
Of Counsel for the Complainant.
GEORGE PAYSON,
Counsel for Defendants.

(Endorsed:) Filed March 3, 1880. Wm. H. Bradley, clerk.

And afterwards, to wit, on the 15th day of March, A. D. 1880, said defendant, by its solicitor, filed in said clerk's office its appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, the Illinois Central Railway Company, W. K. Ackerman, and W. H. Osborn, are held and firmly bound unto Samuel H. Turrill in the full and just sum of one hundred and twenty-five thousand (125,000) dollars, to be paid to the said Samuel H. Turrill, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents. In witness whereof the said The Illinois Central Railroad Company has caused these presents to be signed by its president
38 and its corporate seal to be hereto affixed, and the said W. K. Ackerman and W. H. Osborn have hereto set their hands and seals this sixth day of March, A. D. 1880.

Whereas lately, at a term of the United States circuit court for the northern district of Illinois, in a suit depending in said court on the chancery side thereof, between the said Samuel H. Turrill, complainant, and the said Illinois Central Railroad Company, defendant, a decree was rendered against the said Illinois Central Railroad Company for the sum of ninety-two thousand five hundred and ninety-six dollars and one cent and costs;

And whereas the above bounden The Illinois Central Railroad Company has taken an appeal to the Supreme Court of the United States to reverse the said decree:

Now, therefore, the condition of this obligation is such that if the above-named The Illinois Central Railroad Company shall prosecute its said appeal to effect and answer all damages and costs if it shall fail to make its appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] THE ILLINOIS CENTRAL RAILROAD CO.,
By W. K. ACKERMAN, *President.*

Attest:
L. V. F. RANDOLPH, *Sec'y.*

W. K. ACKERMAN. [SEAL.]
W. H. OSBORN. [SEAL.]

39 Witness:
E. T. H. GIBSON.

Approved March 15, 1880.

THOMAS DRUMMOND.

(Endorsed:) Filed March 15th, 1880. Wm. H. Bradley, cl'k.

40 NORTHERN DISTRICT OF ILLINOIS, *set:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Samuel H. Turrill was the complainant and the Illinois Central Railroad Company was the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 1st day of October, A. D. 1880, and of our Independence the 105th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 112. The Illinois Central Railroad Company, appellant, vs. Samuel H. Turrill. N. Illinois C. C. U. S. Filed 14th October, 1880.